IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION No.14012 of 2004

Between:

P.Bhima Raju, S/o.P.Surpa Raju, Aged 63 years,
R/o.Gudur Village, Bibinagar Mandal, Nalgonda Dist.

..... PETITIONER

AND

The Recovery officer, Employees provident Fund organisation,
Regional office, Barkatpura, Hyderabad-500027.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari and quash proceedings No.AP/17905/Recovery Cell/2004 dated 2-8-2004 in pursuance of certificate No.137/04 dated 27-5-2004 as illegal, *ultra vires* the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and violative of Article 14, 19(1)(d) and 21 of Constitution of India.

Counsel for the Petitioner: MR.P.BALAJI VARMA

Counsel for the Respondent : MR.R.N.REDDY

The Court at the admission stage made the following:

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ORDER:

The petitioner herein is the Managing Director of M/s. Andhra Sinter Limited (ASL), a company having its registered Office in Gudur Village of Bibinagar Mandal in Nalgonda District. Aggrieved by the Proceedings of the respondent herein bearing No.AP/17905/Recovery Cell/2004 dated 2.8.2004, the petitioner approached this Court praying this Court to quash the said Proceedings as illegal and *ultra vires* to the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ('the Act' for brevity).

ASL is a company, which is an establishment covered by the provisions of the Act. It was established for the purpose of manufacturing of sinter products for automotive and non-automotive companies. But due to teething problems faced by the company in the initial stages, the company's performance is unsatisfactory. Therefore, the company sought a reference before the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act (SICA),1952. It is stated by the petitioner that BIFR by order dated 24.4.90 declared ASL as a sick company and the petitioner company and as directed by the BIFR, ASL prepared a rehabilitation proposal. The said proposal allegedly contains provisions for reaping the arrears of P.F. contribution of the ASL.

The PF Establishment initiated proceedings for recovery of the amount in accordance with Sections 7A and 8B of the Act and recovery certificate No.137 of 2004 was issued for recovery of an amount of Rs.13,56,805/-. The petitioner allegedly paid a sum of Rs.3,00,00/- even before issue of recovery certificate and subsequently paid an amount of Rs.80,000/- as part payment, after receiving recovery certificate. Admittedly the petitioner is still due a sum of Rs.9,76,805/-. The petitioner who is Managing Director avers that ASL is making efforts to pay all the dues in instalments and accordingly approached respondent with a request to grant instalments for the payment of said sum. The company also filed a Review Petition under Section 7B of the Act, which was dismissed. Therefore the ASL is taking steps to file appeal under Section 7 (i) of the Act before the appellate Tribunal.

By proceedings dated 30.6.2004, the respondent directed the petitioner to show cause as to why warrant of arrest should not be issued and directed the petitioner to appear before the respondent on 26.07.2004. The petitioner sent a reply through his Counsel. After receiving the reply sent through Counsel, the respondent issued impugned proceedings dated 28.7.2004 ordering the issue of arrest warrant and also giving one more opportunity to pay off all PF dues within seven days from the date of receipt of the said notice.

In this writ petition, Sri P. Balaji Varma, learned Counsel for the petitioner contends

that the impugned proceedings ordering arrest of the petitioner violates the fundamental rights of the petitioner under Articles 14, 19 and 21 of the Constitution of India. He submits that under Section 8B of the Act, the respondent cannot straight away order arrest of the Managing Director when three modes of recovery were available to the Recovery Officer. It is the submission of the learned Counsel that when the respondent has option to the property of the ASL and bring it to sale by auction for recovering the arrears of PF, the impugned order cannot be sustained.

After carefully considering the submission of the learned Counsel for the petitioner, I am not able to countenance the same. ASL or the petitioner do not deny nor dispute that the Company has to pay PF dues and it is also not disputed that the representations filed by ASL to grant instalments for payment of PF dues were refused by the respondent. Though the petitioner has remedy of appeal under Section 7I of the Act, they did not avail the same. Further either in the reply to the show cause notice sent through a Counsel or in the affidavit accompanying the writ petition, it is not brought out specifically that any property of the Company has been attached. Having regard to the provisions of Section 8B of the Act, it must be held that if the Recovery Officer resorts to the mode of attachment and sale of the movable and immovable assets of the Employer or Establishment, it may not be possible to order arrest. In the absence of such attachment, it is always permissible for the Recovery Officer to do so. I may however hasten to add that as the petitioner is willing to pay the amount, he may approach the respondent seeking permission to pay the amount in instalments. As and when he approaches, concerned authority may consider such application for permission to pay the amount of PF arrears in instalments.

The writ petition, with the above observations, is dismissed.

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Date : August 09, 2004. **V.V.S. RAO,J**

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Recovery officer, Employees provident Fund Organisation,
Regional office, Barkatpura, Hyderabad-500027.

2. Two CD copies.